

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 12-76-BMM

Plaintiff,

vs.

BEAVER FRANK APPEL,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Appel of violating his conditions of supervised release by (1) failing to report to his probation officer as directed, (2) lying to his probation officer, (3) failing to notify his probation officer of a change in his address, and (4) failing participate in urine testing. His supervised release should be revoked. He should be sentenced to six months in custody, with fifty months of supervised release to follow.

II. Status

Chief United States District Judge for the District of Montana Dana Christensen sentenced Mr. Appel to fifteen months in custody, with sixty months of supervised release to follow, on February 20, 2013, after a he pleaded guilty to

Failure to Register as a Sex Offender. (Doc. 32.)

United States District Judge Brian Morris revoked Mr. Appel's supervised release on December 12, 2016, because he used methamphetamine and failed to report to his probation officer as directed. (Doc. 45.) Judge Morris sentenced Mr. Appel to four months in custody followed by fifty-six months of supervised release. (*Id.*) Mr. Appel began his current term of supervised release on March 9, 2017.

Petition

The Probation Office filed a Petition for Warrant for Offender Under Supervision on March 21, 2017, alleging that Mr. Appel violated the terms of his supervised release by (1) failing to report to his probation officer as directed, (2) lying to his probation officer, (3) failing to notify his probation officer of a change in his address, and (4) failing participate in urine testing. (Doc. 50.) Judge Morris issued a warrant for his arrest based on the allegations in the petition. (Doc. 51.)

Initial appearance

Mr. Appel appeared before the undersigned on March 28, 2017, in Great Falls, Montana. Federal Defender Hank Branom accompanied him. Assistant United States Attorney Jessica Betley represented the United States.

Mr. Appel said he had read the petition and understood the allegations. He

waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned. The Court continued the revocation hearing until April 24, 2017, to give the parties time to find a place for Mr. Appel to live. (Doc. 52.)

Revocation hearing

The Court conducted the revocation hearing on April 24, 2017. Mr. Appel admitted to the allegations. The violations are serious and warrant revocation of his supervised release.

Mr. Appel's violation grade is Grade C, his criminal history category is II, and his underlying crime is a Class C felony. He could be incarcerated for up to twenty-four months. The United States Sentencing Guidelines call for four to ten months in custody.

Mr. Branom recommended a sentence at the low-end of the guideline range, with supervised release to follow. Ms. Betley recommended six months in custody, with supervised release to follow. Mr. Appel exercised his right of allocution and stated that he missed his urinalysis because he had a doctor's appointment.

III. Analysis

Mr. Appel's supervised release should be revoked because he admitted violating its conditions. He should be sentenced to six months in custody, with

fifty months of supervised release to follow. This sentence would be sufficient given the seriousness of the violations but not greater than necessary.

IV. Conclusion

Mr. Appel was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

Beaver Frank Appel violated the conditions of his supervised release by (1) failing to report to his probation officer as directed, (2) lying to his probation officer, (3) failing to notify his probation officer of a change in his address, and (4) failing participate in urine testing.

The undersigned **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Appel's supervised release and committing him to the custody of the United States Bureau of Prisons for six months, with fifty months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 3rd day of May 2017.


John Johnston
United States Magistrate Judge